



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0483]

RIN 1625-AA09

Drawbridge Operation Regulation; Chincoteague Channel,  
Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to change the operating schedule that governs the SR 175 Bridge across Lewis Channel and Black Narrows, mile 3.5 at Chincoteague, VA. The proposed change would eliminate the need for the current special operating schedule and return the bridge to open on demand. The proposed change does not include the last consecutive Wednesday and Thursday in July for the annual Pony swim.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2014-0483 using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ms. Kashanda Booker, Bridge Specialist; telephone 757-398-6227; e-mail Kashanda.l.booker@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

§	Section	Symbol
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U.S.C.                    United States Code

## A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

## 1. Submitting comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG-2014-0483), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we

have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0483] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0483) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public Meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

On July 14, 2014 the Coast Guard published a test deviation with request for comments, entitled "Drawbridge Elizabeth River, Eastern Branch, VA". 79 FR 40638. The bridge operated under this NPRM's proposed schedule from August 4, 2014 to November 3, 2014. No comments were received.

## C. Basis and Purpose

Virginia Department of Transportation (VDOT), who owns and operates SR 175 Bridge across Lewis Channel and Black Narrows, mile 3.5, at Chincoteague, VA has requested to change the existing bridge regulations, set out at 33 CFR 117.1005. In 2011, the new single-leaf bascule bridge was constructed on a new alignment replacing the former swing-type bridge that was located downstream from the Chincoteague maritime community. The new bridge alignment resulted in boaters having an improved channel access and the number of necessary bridge openings reduced.

The vertical clearance of the new single-span bascule bridge is 15 feet above mean high water in the closed position and unlimited in the open. The horizontal clearance is 60 feet between fender systems.

The current operating schedule allows the draw to open on demand from midnight to 6 a.m., and every one and a half

hours from 6 a.m. to midnight (at 6 a.m., 7:30 a.m., 9 a.m., 10:30 a.m., 12 p.m., 1:30 p.m., 3 p.m., 4:30 p.m., 6 p.m., 7:30 p.m., 9 p.m., 10:30 p.m., and midnight); except from 7 a.m., to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened. This has been the regular operating schedule since November, 16, 2006.

Based on the decrease amount of vessel openings, the Chincoteague maritime community and the Accomack County Board of Supervisors favored a less restrictive opening schedule by proposing a test deviation from scheduled openings to an "on demand" schedule while still balancing the needs of marine and vehicular traffic. The monthly vessel openings at the SR 175 Bridge submitted by VDOT are as follows:

BRIDGE OPENING COUNTS

APR 2013	MAY 2013	JUNE 2013	JUL 2013	AUG 2013	SEPT 2013	OCT 2013	NOV 2013	DEC 2013	JAN 2014	FEB 2014	MAR 2014	APR 2014
1	4	7	7	7	6	7	3	2	0	0	0	3

The bridge logs revealed that from April 2013 to April 2014, the SR 175 Bridge had experienced only 47 total vessel openings.

The SR 175 Bridge is the only vehicular connection between the mainland and Eastern Shore of Virginia and Chincoteague Island. Tourism is a dominant industry of Chincoteague Island with activities taking place in the Town of Chincoteague, Chincoteague Island and Assateague Island.

#### D. Discussion of Proposed Rule

This proposed change in the rule will allow for a less restrictive operating schedule while still balancing the needs of the marine and vehicular traffic. The draw of the SR 175 Bridge will open on demand except: from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened for the annual Pony swim.

From August 4, 2014, to November 3, 2014, the draw of the SR 175 Bridge, mile 3.5, at Chincoteague, opened on signal in accordance with the general operating regulations set out at 33 CFR 117.5. During this test deviation, VDOT gathered data on vessel openings in hopes of eliminating the current operating schedule for vessel passage.

The monthly vessel openings at the SR 175 Bridge submitted by VDOT are as follows:

Bridge Opening Counts

September 2014	October 2014	November 2014
3	5	1

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking.



Below we summarize our analyses based on these statutes or executive orders.

#### 1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The proposed change is expected to have minimal impact on mariners due to the limited number of request requiring openings for the past two years and no anticipated change to vessel traffic.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will not affect or have a significant economic impact on a substantial number of small entities for the following reasons. There have been only 47 openings in the past two years. Vessels that can safely transit under the bridge (with a mast height less than 15 feet) may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or

action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions

which do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.1005 to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 Bridge, mile 3.5, at Chincoteague shall open on demand; except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July the bridge need not open.

Dated: January 8, 2015

Stephen P. Metruck  
Rear Admiral, United States Coast Guard  
Commander, Fifth Coast Guard District

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Date: 01/26/2015]